

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

JACQUELINE M. GRANT,
Appellant,

v.

DEPARTMENT OF DEFENSE,
Agency.

DOCKET NUMBER
DC0752920611-I-1

DATE: NOV 05 1993

Jacqueline M. Grant, Hyattsville, Maryland, pro se.

Langston C. Davis, Esquire, Bethesda, Maryland, for the
agency.

BEFORE

Ben L. Erdreich, Chairman
Jessica L. Parks, Vice Chairman
Antonio C. Amador, Member

OPINION AND ORDER

The appellant has petitioned for review of an initial decision that dismissed her appeal as settled. For the reasons set forth below, the Board DISMISSES the petition as untimely filed.

BACKGROUND

The administrative judge issued an October 22, 1992 initial decision that dismissed the appellant's removal appeal as settled. See Initial Appeal File (IAF), Tab 12. The initial decision stated that it would become the Board's final

decision on November 26, 1992, unless a petition for review were filed by that date. *Id.* at 2.

The appellant filed a petition for review on July 26, 1993, 8 months beyond the deadline for filing a petition for review. See Petition for Review (PFR) File, Tab 1.* The appellant did not submit a certificate of service with her petition for review. *Id.* The Clerk of the Board issued an August 6, 1993, notice informed the appellant that her petition for review did not meet the Board's requirements for a petition for review because it did not contain a certificate of service stating how and when it was served on the other parties, and also advised her that her petition for review appeared to be untimely filed. *Id.*, Tab 2. The Clerk's notice rejected the petition for review and further advised the appellant that, if she wanted the Board to consider her petition, she must refile it within 15 days of the date of the Clerk's notice along with a motion for waiver of the time limit in the form of an affidavit or statement, signed under penalty of perjury, showing good cause for the late filing of the original petition. *Id.* The appellant

* The appellant's submission was entitled "Requesting Petition for enforcement for employment at Defense Mapping Agency." PFR File, Tab 1. The submission discussed her financial problems and general unhappiness with the loss of her Federal employment. *Id.* The Clerk of the Board accepted her submission as a petition for review. See *id.*, Tab 2. The appellant's submission constitutes a petition for review because she generally complains about her loss of Federal employment due to her resignation under the settlement agreement and does not seek to enforce the settlement agreement. See *Dial v. Department of the Army*, 55 M.S.P.R. 219, 220-21 (1992); see also PFR File, Tab 2; IAF, Tab 11.

timely refiled her petition for review with the Board on August 11, 1993, and included a certificate of service indicating that she had served the other parties. *Id.*, Tab 3. She did not, however, address the untimeliness of her original petition for review.

The Clerk issued an August 20, 1993 notice to the appellant, again informing her of the Board's regulations on timeliness and providing her with an additional 10-day opportunity to submit an affidavit or statement, signed under penalty of perjury, showing good cause for her untimely filed petition for review. PFR File, Tab 4. The appellant timely responded to the Clerk's second notice on August 30, 1993. *Id.*, Tab 5. In her notarized but unsworn response she asserted that she was in poor financial condition, she was unable to find employment, and she was confused and had difficulties in communicating with the Board. The agency has timely replied in opposition to the appellant's petition for review. PFR File, Tab 6.

ANALYSIS

A petition for review must be filed within 35 days after the issuance of the initial decision. 5 C.F.R. § 1201.114(d). The Board will waive this time limit only upon a showing of good cause for the delay in filing. 5 C.F.R. §§ 1201.12, 1201.114(f). To establish good cause for the untimely filing of a petition, a party must show that she exercised due diligence or ordinary prudence under the particular circumstances of the case. See *Rivers v. Department of the*

Navy, 54 M.S.P.R. 128, 131 (1992); *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180, 184 (1980).

The appellant's response on timeliness, although notarized, was not in the form of an affidavit or a statement, signed under penalty of perjury as required by the Board's regulations and the Clerk's notices. See 5 C.F.R. § 1201.114(f); PFR File, Tabs 2, 4, 5; see also *Labelle v. Department of the Air Force*, 57 M.S.P.R. 465, 467 (1993). For this reason, it does not show good cause for the untimeliness of her petition for review. See *Fields v. U.S. Postal Service*, 56 M.S.P.R. 78, 81 (1992); *White v. Department of the Navy*, 55 M.S.P.R. 376, 378 (1992). In any case, the reasons that the appellant gives for her untimely filing do not establish good cause for the untimeliness of her petition for review.

The appellant states in her response on timeliness that "[a]lthough [she] agreed to the [finality of the initial] decision on 26 November 1992, at the time [she] was unaware and unprepared of [sic] the current job market and the obstacles that would prevent [her] from becoming employed." PFR File, Tab 5 at 1. However, general financial difficulties do not constitute good cause for waiver of the deadline for filing a petition for review. See *Fields*, 56 M.S.P.R. at 80.

The appellant further asserts that she is unable to communicate properly because she does not have a telephone and therefore must communicate by pay telephone or by mail. See PFR File, Tab 5 at 1. However, the appellant's alleged

difficulty in communicating does not explain why she waited for 8 months after the deadline for filing her petition for review to seek review by the Board, and thus does not establish good cause for her untimely filing. See *Facal v. Office of Personnel Management*, 43 M.S.P.R. 294, 295 (1990). The appellant further alleges that "[i]ncorrect addresses" caused her mail to be delayed. She does not, however, explain what mail was misaddressed and delayed and therefore has not shown good cause for her delay in filing her petition. Additionally, she alleges that her car was repossessed on August 23, 1993 and that important papers, including the Clerk's August 20, 1993 notice, "were scattered everywhere." PFR File, Tab 5 at 1. However, these alleged August 23, 1993 circumstances do not account for the time period between the issuance of the October 22, 1992 initial decision and her untimely July 26, 1993 petition for review.

Finally, the appellant states that she is confused and "did not realize that [she] was part of the recession." PFR File, Tab 5 at 2. The fact that the appellant may now believe that she acted hastily in accepting the settlement agreement and is confused does not establish that she exercised ordinary prudence as is required. See *White*, 55 M.S.P.R. at 378. Accordingly, we dismiss the appellant's petition for review as untimely filed.

ORDER

This is the final order of the Merit Systems Protection Board concerning the timeliness of the appellant's petition

for review. The initial decision will remain the final decision of the Board with regard to the dismissal of the appeal as settled. 5 C.F.R. § 1201.113.

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.